IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

WP(C).No. 12874 of 2004(G)

PETITIONER:

T.D. RAVEENDRAN,S/O. DIVAKARAN, GURUKULAM, KAVUNKAL, MANNANCHERRY, PONNAD P.O., ALAPPUZHA.

BY ADV. SRI.K.K.SATHEESH.

RESPONDENTS:

1. **UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, FREEDOM FIGHTERS DIVISION, LOK NAYAK BHAVAN NEW DELHI-110 003.**
2. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVT., GENERAL ADMINISTRATION (FFP.A) DEPARTMENT, GOVT.SECRETARIAT, THIRUVANANTHAPURAM.**

BY ADV.SRI.S.R.AJITH, ADDL.CGSC,
ADV. SRI. AJITH KRISHNAN, ADDL.CGSC,
GOVT. PLEADER SRI. K.V. MANOJ.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.12874/2004:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR S.S.S. PENSION DTD. 13/04/1998.

EXT.P.2: COPY OF THE PKC ISSUED BY SRI. P.K. SUKUMARAN DTD. 13/04/1998.

EXT.P.3: COPY OF THE LETTER NO. H3/451/98/SR DTD. 04/08/2001 ISSUED BY THE DISTRICT COLLECTOR, ALAPPUZHA TO THE PETITIONER.

EXT.P.4: COPY OF THE REPRESENTATION SUBMITED BY THE PETITIONER DTD. 08/10/2001.

EXT.P.5: COPY OF THE PKC ISSUED BY SRI. NARAYANAN RAMANKUTTY AND THE EXTRACT OF HIS CONVICT REGISTER OF CENTRAL PRISON, TRIVANDRUM IN RESPECT OF THE CERTIFIER SRI. NARAYANAN RAMANKUTTY.

EXT.P.6: COPY OF THE N.A.R.C ISSUED BY THE CHIEF JUDICIAL MAGISTRATE COURT, ALAPPUZHA.

EXT.P.7: COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN O.P. NO. 37599/01.

EXT.P.8: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE DISTRICT COLLECTOR, ALAPPUZHA.

EXT.P.9: COPY OF THE PKC ISSUED BY SRI. H.K. CHAKRAPANI DTD. 21/09/2003.

EXT.P.10: COPY OF THE EXTRACT OF THE CONVICT REGISTER OF CENTRAL PRISON, TRIVANDRUM ISSUED BY THE SUPDT. IN RESPECT OF SRI. H.K. CHAKRAPANI.

EXT.P.11: COPY OF THE ORDER OF SANCTION OF S.S.S. PENSION TO SRI. H.K. CHAKRAPANI VIDE NO. 119/PVS/104/99-FF (SZ) DTD. 18/06/2003 ISSUED BY R.1.

EXT.P.12: COPY OF THE LETTER NO. 71423/FFP A2/2003GAD DTD. 07/11/2003 ISSUED BY R.2. TO THE PETITIONER.

EXT.P.13: COPY OF THE LETTER NO. 52/CC/KER/27/2001-FF (SZ) DTD. 05/01/2004.

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EXT.P.14: COPY OF THE REPRESENATION DTD. 17/01/2004 SUBMITTED BY THE PETITIONER TO THE R.2.

EXT.P.15: COPY OF THE LETTER NO. 7813.FFP.A2/04/GAD DTD. 03/05/2004 ISSUED BY THE R.2.

//TRUE COPY//

prv.

T.R. Ramachandran Nair, J.

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W.P.(C).NO.12874 of 2004-G

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Dated this the 24th day of August, 2007

JUDGMENT

The petitioner is a freedom fighter who had participated in the Punnapra – Vayalar Struggle. He had been granted State pension with effect from 30.8.1988 for participation in the freedom movement, as per order dated 30.8.1988 of the District Collector. Presently, he is aggrieved by the rejection of the application for grant of Central pension by Ext.P13. The petitioner had relied upon the Personal Knowledge Certificate issued by Shri P.K. Sukumaran as well as that of Shri Narayanan Ramankutty and Shri P.K. Chandranandan. All these have been rejected by Ext.P13 for different reasons. He had also produced Ext.P6 NARC issued by the Chief Judicial Magistrate's Court, Alappuzha. Earlier he had approached this court by filing O.P. NO.37599/2001 and this court disposed of the same by Ext.P7 judgment. After that, a fresh hearing was conducted by the District Collector and then he had produced the certificate of Shri H.K. Chakrapani who is getting Central pension and is also a recipient of 'Thamrapathra'. Exts.P10 and P11 are the documents which were produced along with Ext.P8 representation and which relate to the certifier Shri H.K. Chakrapani.

2. One of the reasons stated in Ext.P13 is that in the hearing before the District Collector, the petitioner's case whether he had gone underground for avoiding arrest or not, is not clear and hence the District Collector did not recommend his case.

3. The petitioner's claim is rejected mainly for the reason that the State Government has not recommended the same which is mandatory. Admittedly, the personal knowledge certificate issued by Shri H.K. Chakrapani has not been verified with the claim of the petitioner while forwarding Ext.P12 and no mention is made about it in Ext.P13. Again the petitioner has approached the State Government by Ext.P14, wherein he has relied upon the personal knowledge certificate issued by Shri H.K. Chakrapani. Since those documents are now available with the Government, the same is liable to be verified in accordance with law.

4. This is a case where the petitioner is receiving State Pension based on his suffering in the very same movement. Along with the additional affidavit, the petitioner has produced Ext.P15 letter dated 3.5.2004 of the Government stating that the District Collector reported that merely based on the certificate by Shri H.K. Chakrapani, the application cannot be recommended. No reasons are forthcoming from Ext.P15 as to why the personal knowledge certificate of Shri H.K. Chakrapani cannot be relied

upon.

5. The claim of the petitioner has to be considered not in a technical manner but taking a liberal view, as held by the Supreme Court in the decision reported in **Gurdial Singh v. Union of India (**(2001) 8 SCC 8). This case will show that even after granting State pension to the petitioner, the State is refusing to forward the recommendation to the Central Government by relying upon minute defects, differences, etc. in the application and other documents. It is true that if the claim is fraudulent, the Government is justified in not recommending the case. But here, there is no such case. That the petitioner is a genuine freedom fighter, is evident from the fact that the State has granted pension for participation in the very same movement. This is not disputed in the counter affidavit of second respondent. Therefore, the approach made by the authorities is clearly hyper technical in the light of the decision of the Supreme Court reported in **R. Narayanan v. Union of India and another** (AIR 1990 SC 746) wherein the Supreme Court held that "no one can really expect official records to have been preserved for a period of 40 years to prove the treatment given to the claimant for the injuries sustained by him during the freedom struggle." Therefore, there is no point in insisting upon production

of official records. When an applicant is entitled to rely upon the personal knowledge certificates of competent certifiers, the authority cannot pick and choose the defects in the other personal knowledge certificate which he might have produced earlier, to reject the fresh documents also. There should be a proper consideration on the basis of the fresh materials rather than harping on the defects or other deficiencies in respect of the documents which were produced earlier. This exercise is not seen made in this case. Further, there is a reference in the counter affidavit to an oral statement made by the petitioner before the District Collector that he had worked as a Peon in the office of the Union, etc. No such oral statement is seen recorded and kept in the file produced by the learned Government Pleader. The said aspect is being highlighted ignoring the personal knowledge certificates produced by the competent certifiers.

6. Therefore, there will be a direction to the second respondent to reconsider the entire issue in the light of the fresh documents produced by the petitioner along with Exts.P8 and P14 and to enable the Government to do so, I quash Exts.P13 and P15. After verifying the same a proper verification-cum-entitlement report will have to be forwarded to the first respondent with appropriate recommendation, within a period of six weeks from the date of receipt of a copy of this judgment. The first respondent

shall thereafter consider the application in accordance with the scheme and pass appropriate orders, within a period of two months thereafter. While granting pension, the claim of the petitioner for arrears with effect from the date of application (13/4/1998) will also be considered.

The writ petition is disposed of in the above terms. No costs.

(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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O.P. No.

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JUDGMENT

9th August, 2007.